

REPORT

Of the Committee of Claims in the case of Enos Terry.

DECEMBER 26, 1823.

Read, and ordered to lie upon the table.

The Committee on Claims, to which was referred the petition of
Enos Terry, present a

REPORT:

The petitioner represents that he was, in the fall of the year 1813, the owner of a Grist and Saw Mill, on a stream of water near to the town of Greenville, in the county of Darke in the state of Ohio; that for the defence of the frontier settlements, a body of militia was stationed at Greenville, under the command of General Edmund Munger; that the troops were sickly, owing, as was said, to the stagnant water in the mill pond of the petitioner; that General Munger ordered the dam to be destroyed by his troops, which order was executed; and the petitioner prays a compensation for his loss.

The principal facts alleged in the petition are satisfactorily proven; there exists a doubt, however, whether the sickness of the troops arose from the stagnant water in the pond of the petitioner, or whether it was occasioned by the various causes incident to a camp, which generally generates diseases; and it appears, from the testimony of one of the witnesses, that it has been as sickly in the town of Greenville since the destruction of the dam, as at any time preceding. The committee however, do not consider the question of much importance in deciding this case, as in either event, they do not consider the nation liable to make good the petitioner's loss. If the obstruction of the water occasioned the sickness, General Munger, in common with every other member of community injured thereby, had a right to remove that obstruction. If, however, the sickness was not occasioned by the erection and continuance of the petitioner's dam, the demolishing the dam was a wanton unauthorized act, for which General Munger is personally responsible, and a court is the proper tribunal to give relief.

They therefore recommend the adoption of the following resolution:

Resolved, That the petitioner is not entitled to compensation from the United States.

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The memorial of Enos Terry, of the county of Darke, and state of Ohio,

RESPECTFULLY REPRESENTS:

That he emigrated to said county sometime previous to the late war with Great Britain; that he purchased from the United States a piece of land, adjoining the town of Greenville, in said county; that he erected a saw and grist mill on Greenville creek, about one quarter of a mile from said town. Your memorialist would further represent, that, sometime in the fall of the year 1813, the dam of said mills was torn down by the troops stationed at said town, by order of General Edmund Munger, the commandant of said corps, then in the actual service of the United States; that, in consequence of said demolition, every part of said mill and dam was rendered entirely useless to your petitioner. Your petitioner is willing to concede, that it was supposed said dam stagnated the water, so as to occasion sickness of the troops, and that it might have been, under those circumstances, proper for the troops to have removed it. Your petitioner is aware that private property is at all times subject to the use of the public; he is also certain, that the Constitution guaranties a just and reasonable compensation to the owner for the same. Your petitioner would observe, that he has before petitioned your honorable body for relief; but, from some cause or other, his claim has not been acted upon. Eight years have elapsed since your petitioner's property was destroyed; he therefore humbly prays, that your honors would pass a special act, allowing him to draw from the Treasury of the United States such sum as a compensation for the loss of his said property, as your honors, under all the circumstances and after view of the petitioner's vouchers and papers herewith transmitted, may think fit to appropriate. And your petitioner, as in duty bound, will ever pray.

ENOS TERRY.

September 27th, 1821.

We, the undersigned citizens of Darke county aforesaid, do hereby certify, that we are well acquainted with the above petitioner Enos Terry, and that we believe the matters and facts stated in his memorial are true, and respectfully request that an act may be passed for his relief.

Moses Scott,
Geo. W. Hight,
Reuben Parker,
Jeremiah Mastirsan,
Robert Barennet,

Samuel Wilson,
James Buchanan,
James Bruce,
Jesse Barnet,
John Beers,

George Freshour,
 Alexander Smith,
 Jacob Miller,
 Jacob Miller,
 Joseph Hoofman,
 William Vancey,
 John Schlechty,
 George Noggh,
 Adam Miller,
 Henderson Harvey,
 Abraham Hauss,
 Richard Lyon,
 Bouldin Biddle,
 Abraham Steadybaker,
 Daniel Holly,
 Barnabas Burns,
 David Cole,
 Jacob Sebring,
 Samuel Baker,
 John Whitaker,
 Abraham Miller,
 William Wilson,
 Wm. Folkerth,
 James Rush,
 Thomas McGinnis,
 Henry Coviston,
 Thomas Magrand,
 David Williamson,
 Mathew Young,
 Lewis Bascom,
 John Craig,
 Wm. L. Wilson,
 Benjamin Murphey,
 William Sipe,
 Hezekiah Viets,
 Eastin Morris,
 Robert N. Williams,

James Stephenson,
 Joseph Curtis,
 George Isham,
 John Armstrong,
 Eli Edwards,
 James Braddy,
 Joseph Burdly,
 William Scott,
 James Perry,
 Samuel Reed,
 James Brysan,
 Charles Sumpton,
 John S. Hilbo,
 Caleb Neal,
 Benjamin Deven,
 Jacob Westfall,
 David Irwin,
 Azor Scribnor,
 Silal Atchison,
 Natan Popejoy,
 William Palzay,
 Wm. Gregory,
 Robert Ryan,
 John Briggs,
 Seymor Craig,
 Job Westfall, Jr.
 Aaron Deen,
 Samuel Loring,
 Jacob Scefert,
 John Day,
 Abraham Willis,
 Jacob Hartle,
 Abraham Scrivner,
 Joshua Foster,
 Isaac Hathaway,
 John M. Viel,
 James Devos.

The STATE OF OHIO, } ss.
 Darke County,

Personally appeared before me, the undersigned, a Justice of the Peace, in and for the county aforesaid, William Wilson, Barnabas Burns, Thomas McGinnis, and Charles Sumpton, Sen. who, being duly sworn, according to law, depose and saith, that they are well acquainted with Enos Terry, of said county, and have been for many

years. That the said Enos Terry was owner of a saw and grist mill, erected on Greenville Creek, about one quarter of a mile below Greenville town, in said county; that said mill was in operation prior to the year 1813; that they are informed, and believe, that the dam of said mill was torn down by the troops of the United States stationed at Greenville, in the year 1813, and that they believe the damages which the said Enos Terry sustained, by reason of the destruction of said mills by the troops of the United States, as assessed, was fully to the amount of seven hundred and fifty dollars at that time. And further deponents saith not.

WILLIAM WILSON.
BARNABUS BURNS.
THOMAS MCGINNIS.
CHAS. SUMPTON, Sen.

Sworn and subscribed by William Wilson, Barnabus Burns, Thomas McGinnis, and Charles Sumption, Sen. this 20th October, 1821.

JOHN BEERS,
Justice of the Peace.

The STATE OF OHIO, } ss.
Darke County,

Before me, a Justice of the Peace of said county, personally came Aron Dean and Samuel Loring, of the county aforesaid, who, being duly sworn, according to law, depose, that they are well acquainted with Enos Terry, of the county aforesaid, and have been for many years; and that the said Enos Terry was owner of a grist and saw mill, about a quarter of a mile below Greenville, in the county aforesaid, and that said mill was in operation prior to the year 1813; that they are informed, and believe, that the dam of said mills was destroyed by the troops of the United States stationed at Greenville aforesaid, and that the mill, by reason thereof, was destroyed by the freshets. And the said Aron Dean swears, that he has built a number of mills, and has, for a number of years, followed the millwright business, at times; and him, the said Aron Dean and Samuel Loring, saith, that they have lived a number of years in said county, since said dam of said mills was destroyed, and before and since said mills were destroyed, and saith, if the property had been their own, would not have said destruction done as aforesaid for a less sum than one thousand dollars. And further these deponents saith not.

SAMUEL LORING.
ARON DEAN.

Sword to, and subscribed, by the said Samuel Loring and Aron Dean, this 20th day of October, 1821.

JOHN BEERS,
Justice of the Peace.

The STATE OF OHIO, } ss.
 Darke County, }

Personally appeared before the undersigned, a Justice of the Peace, within and for the county aforesaid, William Scott, Esq. Sheriff of the county aforesaid, who, being duly sworn, according to law, deposeth and saith, that, some time in the year 1813, he, this deponent, was present, and saw the troops of the United States, stationed at Greenville, in the county aforesaid, tear down the dam of a saw mill and a grist mill, belonging to Enos Terry, situated about a quarter of a mile from said town; and that he heard Major Price, who was a commanding officer at the Fort at said town, order the soldiers to tear down said dam, but understood it was the orders of General Edmund Mungar, the commandant of said corps, and that, in consequence of said dam being torn down, the mill was rendered of little value, and afterwards principally washed away with the freshets, on account of the dam being gone, and that the reason of the dam being torn down was, that it was supposed to be the cause of the troops, stationed at said Fort, being sickly; and that this deponent has lived, from the year 1810 or 1811, in the county aforesaid, and that the greatest part of said time within a few rods of said Fort, and believes it has been as sickly in and about the said Fort and town, as it was before said dam was torn down. And further this deponent saith not.

WILLIAM SCOTT.

Sworn to, and subscribed, by the said William Scott, Sheriff of the county aforesaid, this 20th day of October, 1821.

JOHN BEERS,

Justice of the Peace.

The STATE OF OHIO, } ss.
 Darke County, }

Before me, John Beers, a Justice of the Peace, within and for said county, personally came Moses Scott, who, being duly sworn, according to law, deposeth and saith, that, sometime in the year 1813, he, this deponent, was present, and saw the troops of the United States, stationed at Greenville, in the county aforesaid, tear down the dam of a saw and grist mill belonging to Enos Terry, situated about a quarter of a mile from said town; and that he, this deponent, had seen a written order from General Edmund Munger to Major Price, commanding him to have said dam torn away; and that he, this deponent, went with said Major Price to the said mill, and saw the said dam demolished as aforesaid, in the presence of, and under the command of, said Major Price. Deponent further saith, that said troops threw down the hopper of said grist mill, and done other injuries, and were not forbid by the commanding officers. Deponent

further saith, that, to his knowledge, in consequence of said dam being torn down, the mill was rendered entirely useless, and was washed away. And further this deponent saith not.

MOSES SCOTT.

Sworn to, and subscribed, before me, this 2d day of November, 1821.

JOHN BEERS,

Justice of the Peace.

The STATE OF OHIO, } ss.
Darke County,

Before me, a Justice of the Peace of said county, personally came Enos Terry, who, being duly sworn, according to law, deposeth and saith, that he has never received any compensation for the destruction of said dam and mills, as mentioned in the aforesaid depositions, nor has never transferred his claim to any other person, so as any public agent could have paid the same. And further deponent saith not.

ENOS TERRY.

Sworn to, and subscribed, before me, this 3d day of November, 1821.

JOHN BEERS,

Justice of the Peace.

The STATE OF OHIO, } ss.
Darke County,

I, Eastin Morris, Clerk of the Court of Common Pleas, of the county aforesaid, do hereby certify, that John Beers, Esq. before whom the foregoing depositions were taken, is now, and was, at the time of taking the same, an acting Justice of the Peace in and for said county, and his official acts are entitled to credit as such.

In testimony whereof, I have hereunto set my hand, and affixed my official seal, at Greenville, the 3d day of November, 1821.

EASTIN MORRIS, *Clerk.*

The STATE OF OHIO, } ss.
Montgomery County,

Personally appeared Gen. Edmund Munger, before me, William Long, a Justice, within and for said county, and was sworn, accord-

ing to law, depose, that, in the late war, I ordered a company of men to be stationed at Greenville, under orders from Governor Meigs, of the state aforesaid, and to protect the frontiers, and also ordered a mill dam to be torn down and put away, as it was considered injurious to the people and soldiers health, in said Fort Greenville, which mill dam was then owned by Enos Terry; and further, that the water of said dam backed up to the garrison, and that almost all the soldiers were sick on account of the stagnation of the water, as was supposed to be the cause of the sickness.

Sworn, and subscribed, this 28th day of February, in the year 1822.
EDMUND MUNGER.

Given under my hand and seal, as acting Justice of the Peace of Washington township, county, and state aforesaid.

WILLIAM LONG, J. P.

The STATE OF OHIO, }
Montgomery County, } ss.

I, Charles R. Greene, Clerk pro tem. of the Court of Common Pleas of the county aforesaid, do certify that William Long, Esq. before whom the above deposition was taken, is, and was, at the time of the taking thereof, a Justice, duly assigned to keep the peace, in and for said county, and to all his official acts as such, full faith and credit is due, and ought to be given.

In testimony whereof, I have hereunto set my hand and official seal, at Dayton, the 1st day of March, 1822.

C. R. GREENE, Clerk.

